

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF HALLIE S. JESSUP

24 Volume II, Pages 265 - 366

25

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1 (The following is the continued deposition
2 of HALLIE S. JESSUP, taken pursuant to Notice of
3 Taking Deposition, under Rule 30.02(f), at the
4 offices of Womble, Carlyle, Sandridge & Rice,
5 Attorneys at Law, 3300 One First Union Center, 301
6 South College Street, Charlotte, North Carolina, on
7 April 11, 1997, commencing at approximately 8:40
8 o'clock a.m.)

9

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1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Jessup 1019	Records Transfer Lists, Bates	
4		87929785-888, 29890-29895,	
5		29967-30001, 30003-30022,	
6		30024-30028, 30030, 30032,	
7		30035, 29896-29966	270
8	1020	Lorillard Tobacco Company's	
9		Supplemental Response to	
10		Plaintiffs' Interrogatory	
11		No. 5, 10 pages	312
12	1021	Document handwritten by	
13		Counsel, 1 page	322
14	1022	September 3, 1996 letter,	
15		Martin to Fitzpatrick, 2	
16		pages	356
17			
18			
19			
20	WITNESS	EXAMINATION BY	PAGE
21	Hallie S. Jessup	Mr. O'Fallon	270
22		Mr. Monica	359
23		Mr. O'Fallon	362
24			
25			

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1 (REPORTER'S NOTE: Pages 294 through 311 are labeled
2 "CONFIDENTIAL - CATEGORY II/LORILLARD TOBACCO
3 COMPANY, SUBJECT TO MINNESOTA PROTECTIVE ORDER AND
4 ADDENDUM." Pages 346-351 are labeled "CONFIDENTIAL -
5 QUESTIONS CONCERNING 4A INDICES." These pages will
6 be disseminated only to counsel for Plaintiffs and
7 counsel for Lorillard Tobacco Company until further
8 clarification of The Court.)

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 (Jessup Plaintiffs' Exhibit 1019 was
4 marked for identification.)

5 HALLIE S. JESSUP

6 called as a witness, being previously
7 sworn, was examined and testified
8 as follows:

9 ADVERSE EXAMINATION (cont'd)

10 BY MR. O'FALLON:

11 Q. Ms. Jessup, welcome back.

12 A. Thank you.

13 Q. First of all, let me just ask a quick
14 foundational question.

15 We're looking at 1017, and just so I don't have
16 to ask you these questions on -- on each and every
17 page we look at in this document, it's your
18 understanding that for Exhibit 1017 all of these
19 files were reviewed as part of the '95-'96 document
20 review; correct?

21 A. That is correct.

22 Q. However, you can't tell me which of these files
23 were actually collected; correct?

24 A. That is correct.

25 Q. And you can't tell me which, if any, of these

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1 files were actually produced; correct?

2 A. That is correct.

3 Q. I just have some questions on certain entries

4 here, and -- and I want to just see if I can get some

5 background from you to the extent you know on what

6 some of these entries are. I've asked you to look at

7 322, and I'd specifically ask you to look at an entry

8 that says "John Nasar v. Brown & Williamson, et. al."

9 A. Yes.

10 Q. Do you happen to know what that case was about?

11 A. No, sir, I don't.

12 Q. I'd also like you to look at 327, again two

13 lawsuits that appear to be referred to on this page.

14 One is Dorothy Robinson versus Lorillard. Do you

15 know what that is?

16 A. Yes, sir, I do. That was an employment-related,

17 I believe, EEO --

18 Q. Okay.

19 A. -- case.

20 Q. And how about TWIU? Is that a --

21 A. That's the Tobacco Workers International Union.

22 Q. So --

23 A. I'm not certain what that case was.

24 Q. I'd next like you to look at page 334. This

25 page refers in general to Lorillard's international

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1 subsidiaries; is that accurate?

2 A. Yes, sir.

3 Q. Do you know whether any smoking-and-health
4 research was done by any of Lorillard's foreign
5 subsidiaries?

6 A. No, sir, I don't.

7 Q. If research were done by Lorillard's foreign
8 subsidiaries, based on what you know, would it have
9 been the practice of those subsidiaries to have sent
10 that research to the United States, at least one
11 copy?

12 A. I would not be familiar with that, sir.

13 Q. Okay. And who would be the most familiar with
14 that?

15 A. I believe Dr. Alex Spears would be.

16 Q. I'd next like you to look at page 341. And
17 again when I use these numbers, I'm referring to the
18 last Bates stamp number.

19 A. Thank you.

20 Q. There's a reference here to the Literature
21 Retrieval Division. Are you familiar with LRD?

22 A. Vaguely familiar.

23 Q. Okay. What's --

24 What knowledge do you have about LRD?

25 A. It is, I believe, used by -- it is a service

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1 used by litigation attorneys for litigation
2 purposes.

3 Q. What documents would you be storing here from
4 LRD; do you know?

5 MR. MONICA: Object to the form of the
6 question. Doesn't say they're from LRD.

7 Q. Is that an indication that those documents are
8 from LRD?

9 A. This says Literature Retrieval Division of CTR.
10 I'm not certain if that's the same entity --

11 Q. Okay.

12 A. -- as --

13 Q. Is that your understanding what LRD means,
14 Literature Retrieval Division?

15 A. That I realize or understand is a -- a precursor
16 to -- to LS, Inc. I believe that is the litigation
17 service, but I do not know if this is the same
18 entity, if this is the same terminology. I don't
19 know.

20 Q. Okay. Could you tell me what those documents
21 were.

22 A. No, sir, I don't know. These -- these documents
23 on 341?

24 Q. Yes.

25 A. No, sir, I don't.

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1 Q. Who would be the person most familiar with those
2 documents?
3 A. I believe it would be general counsel.
4 Q. For Lorillard?
5 A. Yes.
6 Q. And that is?
7 A. Arthur J. Stevens.
8 Q. Was he a member of CTR?
9 A. Sir, I don't know.
10 Q. I notice that there's handwritten notes that
11 we've seen both yesterday and today --
12 A. Uh-huh.
13 Q. -- that say relating to CTR documents that do
14 not destroy until you clear it through Mr. Stevens.
15 That's why I was asking.
16 A. He's our general counsel, and there was some
17 issue that had arisen and he just wanted to make
18 triple certain --
19 Q. Okay.
20 A. -- that that couldn't -- couldn't happen.
21 Q. There's also a "DESTROY 1995" on this page.
22 A. Yes, sir.
23 Q. Does that mean these documents were destroyed,
24 or can I even tell that from this particular
25 document?

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- 1 A. We cannot tell that from this document.
- 2 Q. We'd need to look at those other documents we
- 3 looked at yesterday; correct?
- 4 A. At the printout of the database, yes.
- 5 Q. So what we'd do is cross-reference, go to box 97
- 6 in the legal department and see the current status of
- 7 that box; correct?
- 8 A. That is correct.
- 9 Q. Let's look at -- at 343 next. Do you know what
- 10 this file is that states, quote, "OMISSION OF
- 11 MANDATORY HEALTH WARNING AND/OR TAR AND NICOTINE
- 12 STATEMENT," parenthetical, "(MAKE GOOD LETTERS)," end
- 13 parenthetical?
- 14 A. No, sir, I don't.
- 15 Q. Who would be the person most knowledgeable about
- 16 that?
- 17 A. Here again, general counsel.
- 18 Q. There's also a notation. There's a extreme
- 19 right-hand column, says "For Records Center Use," and
- 20 it says "322." What does that mean?
- 21 A. That is the location in the records center of
- 22 that carton of documents.
- 23 Q. Do you basically number your space in the
- 24 records center?
- 25 A. Yes, we do.

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- 1 Q. Do you know approximately how many documents are
2 contained in your records center?
- 3 A. Individual documents?
- 4 Q. Well give or take, a rough estimate.
- 5 A. I could not estimate that.
- 6 Q. How many boxes?
- 7 A. Approximately, I think, 6,500 to 7,000.
- 8 Q. Would you next look at page 350. There's a
9 notation here about asbestos cases; correct?
- 10 A. Yes, sir.
- 11 Q. Is it your understanding that that's the list of
12 the asbestos cases that -- that were being stored at
13 that time?
- 14 A. According to this information in front of me,
15 those would be asbestos cases stored in this carton.
- 16 Q. Okay. And this information should be accurate;
17 correct?
- 18 A. Yes, sir, it should be accurate.
- 19 Q. And you can't tell me whether those documents
20 from those asbestos cases were produced in our
21 litigation; correct?
- 22 A. No, sir, I cannot.
- 23 Q. Could you look at page 351. There's a listing
24 there that says "S&H - Chemworth Corporation/Reductol
25 V." Do you know what that refers to?

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- 1 A. No, sir, I don't.
- 2 Q. Is "S&H" a word that's -- or a terminology
- 3 that's generally used at Lorillard for "smoking and
- 4 health"?
- 5 A. Generally it's said in words. I do not know if
- 6 that's what that means.
- 7 Q. Okay. And again the person most knowledgeable
- 8 about that would be outside -- would be general
- 9 counsel; correct?
- 10 A. General counsel.
- 11 Q. Would you look on page 352. There's a reference
- 12 here to "Grand Jury Naegle Investigation." Do you
- 13 know what that refers to, or Naegle investigation?
- 14 A. All I know about -- I do not know anything about
- 15 the grand jury investigation, no.
- 16 Q. Naegle's an outdoor advertising firm; correct?
- 17 A. Yes.
- 18 Q. Is that an outdoor advertising firm that's used
- 19 by Lorillard?
- 20 A. Yes.
- 21 Q. And specifically is it an outdoor advertising
- 22 firm used by Lorillard to advertise tobacco
- 23 products?
- 24 A. Yes.
- 25 Q. Okay. And the person most knowledgeable about

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1 that particular investigation would be who?

2 A. General counsel.

3 Q. I'd also like you to look at 354. At the bottom
4 of that page and also onto the next page, 355, is
5 again a listing of asbestos cases; is that correct?

6 A. According to this listing, yes.

7 Q. Okay. And I think I've already cleared this up,
8 but part of the reason I noted this first was that
9 some of these seemed to be overlapping with the
10 others. This would just refer to documents from
11 those asbestos cases placed in this particular box of
12 documents; correct?

13 A. Yes, sir, that's -- that's our practice.

14 Q. I'd like you to look at 363. This is a letter
15 from Mr. Stevens to yourself indicating that certain
16 doc -- boxes have been taken from the records
17 retention center; correct?

18 A. That is correct.

19 Q. Will there also be a corresponding letter or
20 notation as to when those boxes are sent back?

21 A. Basically, sir, if I read this letter -- and I
22 do recall this instance -- the statement is the above
23 files have been returned to active file status in the
24 legal department.

25 Q. Right.

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1 A. Therefore, they're still in the legal
2 department.

3 Q. Unless there's a records transfer list for a new
4 box that has those in them; correct?

5 A. Yes, sir.

6 Q. Okay. I'd also like you to look at page 364.
7 There's a reference at the -- towards the bottom part
8 of that page about an FTC investigation considering
9 horizontal restraints in the cigarette industry. Do
10 you know what that case was about?

11 A. No, sir, I don't.

12 Q. Are you aware that Lorillard in the past has had
13 to defend claims of antitrust violations?

14 MR. MONICA: Object to the form of the
15 question, assumes a fact not in evidence.

16 MR. O'FALLON: I'm asking the question.

17 A. Would you repeat the question, please.

18 Q. Sure. Are you aware of whether or not Lorillard
19 has been involved in antitrust investigations in the
20 past?

21 A. I am aware that there was a leaf antitrust
22 case.

23 Q. When was that?

24 A. Don't know the date, sir.

25 Q. Approximately?

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- 1 A. I believe it was in the '70s.
- 2 Q. Okay. Do you recall anything in this 1982-1983
- 3 time frame?
- 4 A. No, sir, I don't.
- 5 Q. Okay. And you're not familiar with any of the
- 6 actual documents in that box?
- 7 A. No, sir, I would not be.
- 8 Q. Would you look at 370, please. There's a
- 9 reference there to the "FTC v. LORILLARD" and "AD
- 10 SUBPOENA COMPLIANCE ACTION - CONFIDENTIAL MOTION FILE
- 11 (ROPER STUDY) CORRESPONDENCE & COURT PAPERS." Are
- 12 you familiar at all with that action?
- 13 A. I'm sorry, sir, would that -- was that the first
- 14 item you were reading?
- 15 Q. No, no, it's the third one down.
- 16 A. No, sir, I'm not.
- 17 Q. And you can't tell me whether those documents
- 18 have been produced; correct?
- 19 A. That is correct.
- 20 Q. Is Roper a research organization?
- 21 A. Sir, I don't know.
- 22 Q. You aren't familiar with the Roper work at all?
- 23 A. I've heard the term, but I do not know.
- 24 Q. Could you look on page 372. About two-thirds of
- 25 the way down that page there's a heading "FTC:

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1 Nicotine-Flavor Enhanced." Are you familiar with
2 that file?

3 A. No, sir.

4 Q. Do you know whether there were allegations made
5 by the FTC against Lorillard that they had enhanced
6 their cigarettes with nicotine?

7 A. I do not know.

8 Q. And you can't tell me whether or not this
9 particular file's been produced; correct?

10 A. No, sir. I do know that all these records in
11 this -- in this category have been reviewed.

12 Q. Right. My question is whether I have it. You
13 can't tell me whether the State of Minnesota has seen
14 these documents in its depository in Minnesota;
15 correct?

16 A. I cannot say that.

17 Q. Could you look on page 397, please.

18 A. 397?

19 Q. Yes. This particular page refers to something
20 called the Schenley files. Can you tell me who
21 Schenley is?

22 A. No, sir.

23 Q. There's also a -- down in number three it says
24 an antitrust file. Do you know what that is?

25 A. No.

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1 Q. Many of the documents you retain are more than
2 20 years old; correct?

3 A. Many of them?

4 Q. Some of them.

5 A. Absolutely.

6 Q. It's been a practice to keep documents as people
7 retire, for instance; correct?

8 A. It has been.

9 Q. Is that a required practice in fact?

10 A. Yes, sir. As -- as far as business records?

11 Q. Yes.

12 A. It is a required practice.

13 Q. So when someone retires, there's an obligation
14 that they give their documents to Lorillard;
15 correct?

16 A. That is correct.

17 Q. Lorillard considers those documents its company
18 property; correct?

19 A. They're Lorillard documents.

20 Q. And what Lorillard considers to be the company
21 property -- property are those business records that
22 the individuals kept; correct?

23 MR. MONICA: I object to the form of the
24 question, calls for a legal conclusion.

25 THE WITNESS: Repeat the question, please,

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1 sir.

2 MR. O'FALLON: Why don't we go ahead and
3 have it read back.

4 (Record read by the court reporter.)

5 MR. MONICA: Same objection.

6 A. When someone retires or leaves us for any
7 reason, their records are retained by Lorillard.

8 Q. Okay. Now Lorillard doesn't have any interest
9 in their personal records; correct?

10 A. I would not assume so.

11 Q. What Lorillard wants are those records that
12 reflect actions or information that person had or
13 gathered in the course of his business with
14 Lorillard?

15 MR. MONICA: Object to the form of the
16 question.

17 A. That's my understanding.

18 Q. And that would be the information that is then
19 sent to your facility for storage; correct?

20 A. That is correct.

21 Q. And just so we're clear, that would be
22 information that had to do with Lorillard's business;
23 correct?

24 A. When someone -- and I'll say this again
25 because -- our practice is that when someone leaves

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1 us, their records are either given to the employee
2 who replaces them or retained in that area so that
3 the business may proceed onward or the records are
4 boxed up and sent to the storage facility. The
5 employee quite often boxes those records up and --

6 Q. And Lorillard considers those records to be
7 Lorillard property and Lorillard assets?

8 MR. MONICA: Object to the form of the
9 question.

10 A. From my perspective and -- and my opinion, yes.

11 Q. Let's look on page 401. This refers to a file
12 "VARIOUS MATERIALS RE: PACIFIC TOBACCO." Do you
13 know what that refers to?

14 A. No, sir.

15 Q. Would you look at page 430. I'd like you to
16 look at the last entry there, which has to do with --
17 it says "S&H CTR-HICKEY SPECIAL PROJECT." Do you
18 know what that is?

19 A. I know that "CTR" stands for "Council for
20 Tobacco Research."

21 Q. And in this instance "S&H" would be "smoking and
22 health," wouldn't it?

23 A. That would be an assumption on my part.

24 Q. Is there any other group of words that you would
25 use "S&H" to stand for at Lorillard?

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1 A. Not to my knowledge.

2 Q. Okay. So it is a reasonable assumption that
3 that would mean "smoking and health"; correct?

4 A. It would have to be an assumption.

5 Q. But you'd be one of the people most knowledgeable
6 about that; correct?

7 A. Yes.

8 MR. MONICA: About what?

9 Q. I mean, you're certainly the person most
10 knowledgeable about these particular records transfer
11 lists; correct?

12 MR. MONICA: I'm going to object to the
13 form of the question. It's vague and confusing.

14 A. Yes, I am the most knowledgeable about transfer
15 lists from the standpoint of retaining the records,
16 et cetera, from a record retention standpoint.

17 Q. Don't you want some uniformity in how files are
18 denoted in the records transfer lists?

19 A. For the purpose that we have, it is for
20 retrieval of records by individuals as needed for
21 whatever purpose the company has. It is not -- you
22 know, I would not say that that would make a
23 difference to me in retaining the records.

24 Q. You don't have any interest in what's actually
25 in those boxes; correct?

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1 MR. MONICA: Object to the form of the
2 question, vague.

3 A. Certainly I care what's in the boxes from the
4 standpoint of my responsibilities of retaining
5 records, yes.

6 Q. But you don't have intimate knowledge of what's
7 in the boxes; correct?

8 A. Not each and every file, no.

9 Q. And you can't tell me whether this particular
10 file has been produced to Minnesota; correct?

11 A. I cannot.

12 Q. Let's go to page 442. Towards the bottom of
13 that page we have about four references to The
14 Council for Tobacco Research, CTR, and again we have
15 a handwritten note. Is that your handwriting?

16 A. Yes, it is.

17 Q. Is it an accepted practice at Lorillard that you
18 can make handwritten notes on typewritten documents
19 like this?

20 MR. MONICA: Object to the form of the
21 question.

22 A. There is no preclusion to me writing this note.

23 Q. And notes like this occur all the time;
24 correct?

25 A. Occasionally. I wouldn't say all the time.

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1 Q. And they often occur for exactly this purpose,
2 where you need some kind of a handwritten note that
3 clarifies what's in the document itself; correct?
4 A. I'm sorry, I'm not sure I understand.
5 Q. Well for instance, you used this note to clarify
6 what was otherwise in that document; correct?
7 A. I used this note as an absolute safeguard to --
8 to make certain these documents were not destroyed.
9 Q. Right. In other words, it's a clarification of
10 what would otherwise appear in that column; correct?
11 A. I guess you could call it that. I'm not --
12 Q. And you did this for business purposes;
13 correct?
14 A. Yes.
15 Q. Would you look on page 447. Are you at that
16 page?
17 A. Yes, I am.
18 Q. Do you see several references here again to
19 "S&H"?
20 A. Yes, I do.
21 Q. Do you happen to know what that means?
22 A. It would be an opinion.
23 Q. And what would that opinion be?
24 A. My opinion would be that that does indicate
25 "smoking and health."

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1 Q. And why do you say that?

2 A. Looking at the topics as accompanying the
3 information.

4 Q. They all appear to be topics that involve
5 smoking and health; correct?

6 A. That would be my opinion, yes.

7 Q. Okay. Number nine is "Philip Morris Research
8 Center" -- "Center - Human Smoke Intake Study";
9 correct?

10 A. That's correct.

11 Q. From time to time does Lorillard receive
12 research from other tobacco companies' research
13 centers?

14 MR. MONICA: Object as beyond the scope of
15 the notice.

16 A. I do not know.

17 Q. Lorillard kept this particular document in its
18 file because it thought it was important to its
19 business of manufacturing cigarettes; correct?

20 MR. MONICA: Object to the form of the
21 question, vague and confusing.

22 A. I cannot determine why it was retained by this
23 department or what their thoughts were.

24 Q. Would you assume that someone thought this
25 document had a business purpose?

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1 MR. MONICA: Objection, calls for
2 speculation.

3 A. That would be my opinion.

4 Q. Could you look on page 450. There's a reference
5 there to "CTR Special Project - Dr. H. Fundenberg."

6 A. Yes.

7 Q. Are you familiar at all with that project?

8 A. No, sir.

9 Q. You can't tell me whether that document was
10 produced; correct?

11 A. I cannot.

12 Q. Could you look at page 454. At the top of this
13 page is a file called the "Tobacco Litigation Fund
14 (Special Account Number 3) and Special Account Number
15 4." Are you familiar with those documents?

16 A. No, sir.

17 Q. Was it your understanding that there was a
18 special fund set up for litigation purposes at
19 Lorillard?

20 MR. MONICA: Objection, beyond the scope of
21 the notice.

22 A. I do not know.

23 MR. MONICA: I would like the record to
24 show that each time I make this objection beyond the
25 scope of the notice I am, as I have in the past,

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1 telling counsel that this witness does not speak on
2 behalf of the corporation for that particular
3 answer.

4 Q. On page 456 could you take a look there. There
5 is a case there entitled "Robert Redford v.
6 Lorillard." Do you happen to know what that's
7 about?

8 A. It was with regard to the use of a -- a
9 trademark, I believe, for a Redford cigarette
10 proposed brand.

11 Q. Okay. And who is John J. Bresnahan? Was he a
12 Lorillard employee?

13 A. Yes, sir.

14 Q. Do you know what he did?

15 A. I don't remember his title.

16 Q. Could you look at page 488. This states that
17 this is a listing of files being sent to Lancaster,
18 Pennsylvania. Is there a document storage facility
19 in Lancaster, Pennsylvania?

20 A. There was.

21 Q. And what happened to all of these documents --
22 well strike that. Let's go back.

23 When did that facility close?

24 A. I believe it was in the late '70s.

25 Q. And what happened to the files that were at that

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1 facility when it closed?

2 A. Those files were forwarded to the Greensboro

3 records center.

4 Q. So at some point I should be able to find a

5 records transfer list for each and every one of these

6 files; correct?

7 A. Sir, actually you have that list.

8 Q. Okay. Where is that? Is that --

9 A. It's just the previous page, item 487.

10 Q. Well is 487 a transfer out or a transfer in?

11 A. Okay. 487 is a records transfer list to

12 Lancaster.

13 Q. Right.

14 A. And the files that are attached are the files

15 that are being sent with that transfer list --

16 Q. Okay.

17 A. -- is my understanding of how we operated at

18 that time.

19 Q. Right. What I'm saying is: Someplace I should

20 be able to find another list that again lists these

21 files being transferred back to your center;

22 correct?

23 A. Let me clarify. The Greensboro records center

24 was established somewhere in the late '70s. The

25 Lancaster center was in existence at that time, and

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1 when the Lancaster center closed, the Greensboro
2 records center was opening or had opened. These
3 records would have been shipped to Greensboro.
4 Q. I know, but shouldn't you at some point have a
5 records transfer list that reflects the fact that
6 they were then shipped back to Greensboro, or are you
7 saying this is that list?
8 A. This is the transfer list --
9 Q. But this is --
10 A. -- that we currently use.
11 Q. But this is the transfer list transferring these
12 documents to Lancaster, right, or not?
13 A. When we say "records transfer list," that is
14 what is in the carton, and that transfer list would
15 go with that carton irrespective of where it's
16 stored.
17 Q. Okay. So the fact that you now have this
18 transfer list would indicate that this box is now in
19 your facility?
20 A. Yes.
21 Q. Okay, okay. Sorry for being so dense.
22 Let's look on page 494. Items 10 and 11 say
23 cancer cases A through K and cancer cases L through
24 Z; correct?
25 A. They do.

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1 Q. Do you know what that refers to?

2 A. I do not.

3 Q. Do you know how many cancer cases Lorillard has
4 had?

5 A. No, sir, I --

6 MR. MONICA: Object to the form of the
7 question, vague and ambiguous.

8 A. No, sir, I don't.

9 Q. Has Lorillard ever made any attempt to track the
10 number of cases where people allege that their cancer
11 was caused by Lorillard products?

12 MR. MONICA: Object, beyond the scope of
13 the notice.

14 A. I do not know.

15 (The following portion identified as
16 "CONFIDENTIAL - CATEGORY II/LORILLARD
17 TOBACCO COMPANY, SUBJECT TO MINNESOTA
18 PROTECTIVE ORDER AND ADDENDUM," will be
19 contained only in Plaintiffs' and
20 Defendant Lorillard Tobacco Company's
21 counsels' transcripts.)

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1 (The portion identified as "CONFIDENTIAL -
2 CATEGORY II/LORILLARD TOBACCO COMPANY,
3 SUBJECT TO MINNESOTA PROTECTIVE ORDER
4 AND ADDENDUM" was concluded, and all
5 counsel indicated on the appearances page
6 of this transcript returned to the
7 deposition room for the following
8 proceedings.)
9 (Jessup Plaintiffs' Exhibit 1020 was marked
10 for identification.)
11 MR. MONICA: After a short break, during
12 which counsel further discussed Exhibit 1019, it was
13 observed that the exhibit is clearly marked at least
14 on some pages Category I; an example would be page
15 87929867. And we discussed the fact that Category I
16 information is also entitled to special treatment at
17 depositions, and so to be cautious about this, we are
18 going to -- and counsel can please speak to this
19 after I'm done. As I understand, we're going to at
20 least for now have this exhibit under seal and the
21 testimony pertaining to it until we can ascertain the
22 proper treatment to be given to Category I as well as
23 Category II. It may turn out that the information
24 about which I was concerned is Category I and not
25 Category II, but still it would be entitled to

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1 special treatment as Category I.

2 MR. O'FALLON: What we'll agree to do is
3 for now what we'll do is I think Mr. Monica's
4 cocounsel, Mr. Roston, is going to go through this
5 document to see if there are any other pages that
6 have the denotation of Category I on them. We'll
7 make sure that the court reporter then seals those
8 pages and they will remain sealed and not distributed
9 to other counsel or anybody else from this
10 deposition. As Mr. Monica's stated, that portion of
11 the deposition will be kept confidential and sealed
12 until such time as this issue is resolved.

13 Also just because I'm unclear as to what
14 precautions have to be taken concerning keeping those
15 documents safe, we're going to have those pages, once
16 they're sealed, they will be given to one of the
17 individuals who is running the videotape, and he will
18 then hand carry those back to Minnesota, where they
19 will remain sealed until we resolve the issue. Is
20 that acceptable?

21 MR. MONICA: Yes, it is. One final thing
22 that occurred to me, and I don't know the answer to
23 it, but the order may provide for the court reporters
24 to sign affidavits on Category I and Category II. If
25 they haven't done so, I would request that they do so

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1 expeditiously.

2 MR. O'FALLON: They have done so. As a
3 matter of fact, they delivered to me prior to this
4 deposition signed affidavits that were affidavits for
5 not only the first protective order but the second
6 protective order, the addendum to the protective
7 order that specifically talked about Category I and
8 II. And as a matter of fact, while we were talking,
9 that's what I was looking for so I could just check
10 those. And at some point here when we take another
11 break and before I close my record today, I will go
12 back and make sure we've put this particular issue to
13 rest.

14 MR. MONICA: Thank you very much.

15 Does the State of Washington care to say
16 anything, Mr. Ferguson?

17 MR. FERGUSON: No.

18 MR. MONICA: Okay.

19 MR. FERGUSON: The procedure sounds
20 acceptable to me.

21 MR. MONICA: All right. Thank you.

22 BY MR. O'FALLON:

23 Q. I've next marked as Plaintiffs' Exhibit 1020
24 Lorillard Tobacco Company's Supplemental Response to
25 Plaintiff Interrogatory Number 5. Specifically this

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1 interrogatory related to various indexes that are
2 kept at Lorillard, and I would just like to go
3 through it to make sure that I understand what these
4 indexes are and ask you whether or not they --
5 they've been re -- been produced in this case. I'd
6 ask you to look starting at page two through the end
7 of the document.

8 First of all, are you familiar generally with
9 the document indexes kept at Lorillard?

10 A. A great many of them.

11 Q. Okay. On page three the first index referred to
12 is the reprint index.

13 A. Yes.

14 Q. Are you familiar with that index?

15 A. I am.

16 Q. And this apparently relates to articles and
17 presentations?

18 A. This --

19 This index would relate to published articles in
20 the public domain, as I understand it, in our
21 database, in our research library, that relates to
22 that.

23 Q. Okay. Would this contain on it any documents
24 unpublished that have been authored by Lorillard
25 employees?

1 A. Not to my knowledge.

2 Q. Okay. And this is kept on a computerized
3 database; correct?

4 A. Yes, it is.

5 Q. Do you know whether this index has been produced
6 to the plaintiffs in Minnesota?

7 A. I know that it has been reviewed; if responsive,
8 produced.

9 Q. But you don't know whether specifically it's
10 been produced; correct?

11 MR. MONICA: I would state for counsel that
12 it's my understanding that after we answered the
13 Interrogatory Number 5, that counsel for the State of
14 Minnesota was given an opportunity to request certain
15 indices, and they did request the internal index and
16 the stored files records index, and we have provided
17 both of those.

18 MR. O'FALLON: Okay. And were those
19 provided together? Are those the two -- the two
20 indexes that were provided in those two boxes we
21 discussed earlier? Do you know what I'm talking
22 about?

23 MR. MONICA: No.

24 THE WITNESS: You're talking about the
25 stored file index.

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1 MR. O'FALLON: The stored file index,
2 okay. The --

3 MR. MONICA: That's the RTLs.

4 MR. O'FALLON: The RTLs, but then there was
5 also the computerized box printout. Is that also the
6 stored records index?

7 MR. MONICA: The -- the -- it's my
8 understanding and recollection that the -- one of the
9 two indices was provided on tape -- or disk --

10 MR. O'FALLON: Okay.

11 MR. MONICA: -- in addition to the hard
12 copy.

13 MR. O'FALLON: Okay, good enough.

14 BY MR. O'FALLON:

15 Q. Are there any additional indices other than
16 those that are set out in this response that you know
17 of at Lorillard?

18 MR. MONICA: Mr. O'Fallon, are you
19 referring to document indices because that --

20 MR. O'FALLON: I'm referring to document
21 indices for the time being.

22 A. Not to my knowledge.

23 Q. Okay. Are there any indices relating to things
24 other than documents that are kept at Lorillard?

25 A. I'm sorry, could you be a bit more -- I'm sorry,

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1 I don't under --

2 Q. Well the objection caused me to -- to wonder
3 whether or not there's anything at Lorillard where
4 there are indexes to non-documentary-type subject
5 matters.

6 MR. MONICA: I -- I would state for the
7 record, Mr. O'Fallon, it's my understanding and
8 recollection that we had an agreement with the State
9 of Minnesota, through its counsel, that the indices
10 that we should reveal to them that they were
11 interested in were indices of company documents, and
12 that's what this answer pertains to.

13 MR. O'FALLON: I understand. I'm just
14 trying to determine whether there are some other
15 indices to something besides documents at Lorillard.
16 To be honest with you, Counsel, I can't imagine even
17 what that would be, but I ask because I'd rather know
18 the answer than not know the answer.

19 MR. MONICA: I will have to state my
20 objection that it's beyond the scope of discovery and
21 beyond the notice.

22 A. I would not know.

23 Q. Okay. Let me ask a couple of quick questions
24 about electronic records.

25 Is it Lorillard's -- is it Lorillard's practice

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1 to keep --

2 MR. MONICA: Excuse me. We're informed
3 that there's an urgent message for the court reporter
4 at the secretarial desk.

5 THE REPORTER: Off the record, please.

6 (Recess taken.)

7 MR. MONICA: We had another break, and as
8 counsels want to do, we've been talking about orders
9 and -- and how we can best comply with them, and
10 specifically on the confidential Category I material,
11 and it occurred to us that until we can get home and
12 all check the orders in both states of Minnesota and
13 Washington, that it would be wise to implement a
14 couple of additional procedures to make sure that
15 everything is protected properly. Above all, all
16 counsel have agreed that we want to comply with all
17 court orders. We don't have all of the orders with
18 us, and we haven't had the opportunity to study them
19 in depth in conjunction with this deposition.

20 So here's what we're going to do: Jon Ferguson,
21 representative of the State of Washington, has agreed
22 to return his deposition transcript from the first
23 day to the court reporter and not receive the
24 transcript for the second day until we can work out
25 how best to accomplish this. It is our intent to

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1 provide Mr. Ferguson with a copy of the transcripts
2 consistent with all court orders, and as soon as we
3 work out how that will be done, we will accomplish
4 that.

5 In addition, Mr. O'Fallon has requested that the
6 deponent, Ms. Jessup, agree to be bound by the
7 Minnesota protective orders, and while I have some
8 doubt whether that is required since she is a
9 Lorillard witness and these are Lorillard documents,
10 I have no problem with having her state on the record
11 that she will comply with all court orders pertaining
12 to Category I and Category II and confidential
13 documents, and I would now request that she make that
14 statement on the record.

15 THE WITNESS: I state that I will comply
16 with all Minnesota court orders relative to Category
17 I and Category II documents.

18 MR. O'FALLON: Thank you for that.

19 Also just clarify for the record that to the
20 extent Ms. Jessup has been shown some documents that
21 are part of larger exhibits designated as Category I,
22 those documents were in fact Ms. Jessup's documents
23 that she worked with on a daily basis; correct?

24 THE WITNESS: That is correct, sir.

25 MR. FERGUSON: Let me say something.

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1 MR. MONICA: Yes.

2 MR. FERGUSON: Washington's here at the
3 invitation of Lorillard, not at Washington's
4 insistence that it be allowed to attend. The
5 Washington orders do provide that Washington has
6 access clearly to Category I material. In the
7 interest of everyone's comfort, I'm perfectly willing
8 to return the transcript and exhibits, but I think
9 we'll find that Washington is entitled to receive
10 them.

11 MR. MONICA: I -- I think you are right,
12 and I do appreciate your cooperation just to give us
13 time to ferret all this out and make sure we're doing
14 it properly.

15 MR. FERGUSON: Sure.

16 MR. MONICA: I have a list here of pages
17 that Mr. Roston was able to get for us by looking at
18 Exhibit Number 1019 of the Category I information,
19 and rather than reciting all these in the record,
20 shall we -- you just want to mark this as an
21 exhibit --

22 MR. O'FALLON: Let's do that.

23 MR. MONICA: -- so we have it?

24 MR. O'FALLON: Can we mark as Plaintiffs'
25 Exhibit 1021 the list of those pages that will be

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1 pulled from 1019 and sealed pending further agreement
2 by parties.

3 (Jessup Plaintiff's Exhibit 1021 was marked
4 for identification.)

5 (Discussion off the stenographic record.)

6 MR. MONICA: Since Mr. Roston is counsel
7 for Lorillard, I'm going to ask him to state on the
8 record, identify what this is and how it was
9 constructed so we just have that on the record
10 briefly.

11 MR. ROSTON: I compiled this document by
12 reviewing Exhibit 1019 and writing down the Bates
13 numbers that are marked with the following legend:
14 "CONFIDENTIAL - CATEGORY I: MINNESOTA TOBACCO
15 LITIGATION."

16 MR. MONICA: Out of what exhibit?

17 MR. ROSTON: Exhibit 1019.

18 MR. MONICA: Thank you.

19 MR. O'FALLON: And with that, we will make
20 this a -- an exhibit to the deposition, and the court
21 reporter will pull these pages and seal them again
22 pending further notification from the parties. And I
23 would suggest, Mr. Monica, that you and I can perhaps
24 have correspondence back and forth, resolve this
25 issue and then notify the court reporter for their

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1 comfort.

2 MR. MONICA: Yes, I agree.

3 MR. O'FALLON: And with that, we'll move on
4 to the non-controversial part of the testimony.

5 BY MR. O'FALLON:

6 Q. When we left off, I was asking about electronic
7 documents at Lorillard. Is it Lorillard's practice
8 to make paper copies of the documents it keeps stored
9 by electronic media?

10 A. As an overall practice?

11 Q. Yes.

12 A. No, sir.

13 MR. MONICA: Counsel, there is an agreement
14 in Minnesota on electronic data.

15 MR. O'FALLON: Right. It was my
16 understanding that the only electronic data that
17 would be produced is that data which has actually
18 been printed. Is that your understanding?

19 MR. MONICA: That -- that which was printed
20 at the time of the agreement.

21 MR. O'FALLON: Okay.

22 MR. MONICA: That date I don't have in my
23 mind. I mean, I don't recall --

24 MR. O'FALLON: Right.

25 MR. MONICA: -- specifically.

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1 MR. O'FALLON: Or -- or that had been
2 printed. I mean, it was my understanding that, for
3 instance, with E-mail, that if -- if it was a normal
4 practice of that employee to print their E-mails off
5 and put them in their files, that that would be
6 produced, but that otherwise we wouldn't ask for
7 anybody to go back in and print all the E-mails. Is
8 that what you understand?

9 MR. MONICA: That's basically right. It's
10 my understanding that if in doing the collection you
11 found an employee had printed out E-mail and there
12 were hard copies of his or her E-mail in the file at
13 the time of the collection or at the time -- I guess
14 it's the date of the collection, they would be
15 collected.

16 MR. O'FALLON: That was my understanding as
17 well.

18 BY MR. O'FALLON:

19 Q. And that's -- my question was just to know what
20 Lorillard's policies were regarding printing out of
21 E-mail, and -- and I was just wondering whether or
22 not it was a Lorillard practice to print that out or
23 not.

24 A. I believe in my conversations with employees,
25 et cetera, some employees do print it; some do not.

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1 Q. Okay. But there's no overall Lorillard policy
2 on that; correct?

3 A. That you must print your E-mail?

4 Q. Right.

5 A. Not to my knowledge.

6 Q. Are there any other kind -- kinds of data that
7 are kept in a purely electronic medium without being
8 printed out, such as, for instance, now that we're in
9 the -- the computer age, occasionally you can get
10 entire books and that -- that on CD ROM? Was that
11 true in 1994, before that time, to the best of your
12 knowledge?

13 A. Are you asking specifically about books, outside
14 information or --

15 Q. I was just using that as an example.

16 A. So any information that we would have that would
17 be strictly in electronic form --

18 Q. Correct.

19 A. -- that exists in no other form?

20 Q. Right. And this is prior to 1994.

21 A. I need to think about that a minute. I want to
22 give you an entirely accurate, as I can, answer.

23 MR. MONICA: And again and I'm -- I'm going
24 to insert an objection that it's beyond the scope of
25 the notice.

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- 1 A. From my present recollection, I -- I cannot
2 think of anything.
- 3 Q. Okay. For stored documents, does Lorillard
4 microfiche any of its stored documents?
- 5 A. In the stored records center?
- 6 Q. Yes.
- 7 A. Have not.
- 8 Q. Okay. Does Lorillard store any --
- 9 A. Let me caveat that. There may be some reprints
10 that have been microfilmed that also exist in paper.
- 11 Q. Okay.
- 12 A. I --
- 13 Q. When you're speaking about reprints, are you
14 talking about published information?
- 15 A. Journal articles, et cetera.
- 16 Q. Has Lorillard introduced any document retention
17 process whereby documents are saved on any other form
18 of electronic media as opposed to keep -- keeping
19 them in -- in paper form? And what I'm talking about
20 here is to whether Lorillard has implemented any
21 electronic storage system such that they can then
22 take their paper documents and throw them away.
- 23 A. There has not been a major undertaking of that
24 regard. In our library, a copy of a document is sent
25 to the library. It is eventually -- of our internal

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1 reports, eventually microfilmed. At that point
2 someone might not keep their personal copy because
3 they know it's in the library.

4 As far as electronics, I can't think of anything
5 at the moment. And here again, I have not really
6 reviewed that area, so I don't want to be not
7 forthcoming, but I --

8 Q. And I was really more referring to your area; --

9 A. Uh-huh.

10 Q. -- that is, stored documents.

11 A. Uh-huh.

12 Q. And I ask this question simply because in these
13 days in the fashion in which electronics are now
14 catching up and moving back with us, I mean, just I
15 don't know whether -- whether any corporations have
16 decided that as opposed to microfiche they're going
17 to put their documents on CD ROMs, but I was just
18 asking whether Lorillard had ever actually done
19 that.

20 A. Not within my purview, within my department and
21 in the records center, no.

22 Q. It's really a technology base question. The
23 technology is becoming so amazing that --

24 Let me talk for a minute and kind of bring to a
25 close some of the collection questions we've been

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1 asking.

2 When did Lorillard complete its document

3 collection in the 1995-1996 time frame?

4 A. The actual collection effort, the review of
5 files, was completed I believe approximately May 24,
6 last week of May 1996.

7 Q. Had documents been copied and sent to Shook
8 Hardy on a rolling basis?

9 A. Yes, they had.

10 Q. And when did you actually start the physical
11 document review?

12 A. Physical document review was begun the first two
13 weeks of November 1995.

14 Q. And in fact was -- was your particular area, the
15 stored documents, one of the first places that it was
16 started?

17 A. Yes, sir.

18 Q. And it's my understanding that your document
19 review was not done with respect to any individual
20 state but was done generally for overall
21 smoking-and-health litigation; correct?

22 A. That is correct.

23 Q. Are you aware that there have been subsequent
24 orders in Minnesota compelling the production of
25 additional documents regarding additional subjects?

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1 A. Yes.

2 Q. Have additional document reviews been undertaken
3 since May of 1996 to comply with those orders?

4 A. I do know of one, and that is formula
5 correspondence.

6 Q. Okay. And this is not the formula review, so we
7 won't go into that. It was my understanding that had
8 been done separately.

9 Other than the formula review, anything else?

10 A. I believe I -- I do recall that there were some
11 other requests, and our review and collection had
12 already handled those and so we did not have to go
13 back and re-collect or rereview for collect --
14 collection purposes.

15 Q. So at that point it was simply a matter of your
16 attorneys going back to the documents that are
17 already collected and deciding whether or not they
18 believed there was anything responsive at that
19 point?

20 A. That is my understanding.

21 Q. I'd like to talk with you for a minute about
22 document security. Documents at Lorillard are not
23 available to just anybody; correct?

24 A. No, sir.

25 Q. Documents at Lorillard are only available to

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1 certain employees within Lorillard; correct?

2 A. Could you clarify your question a bit more? I'm

3 not sure I understand exactly --

4 Q. Certainly.

5 A. -- what you're asking.

6 Q. Do you have document security measures in place

7 at Lorillard?

8 A. Are you referring to active files, stored

9 files?

10 Q. Let's talk about stored files first.

11 A. Yes.

12 Q. And what are those procedures?

13 A. Those procedures are that when we enter the

14 records center, there is a notation made in our

15 security guard's log. There are very few individuals

16 with keys to the records center. We do not permit

17 people to go and check their own cartons of records.

18 We provide the service in my department of pulling

19 records for them. It's under lock and key.

20 Q. And people from the outside, third parties,

21 cannot access your files unless you specifically

22 decide that they can access those files; correct?

23 A. That is correct.

24 Q. So it wouldn't be possible for someone to come

25 in and put information in your stored files, correct,

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1 from the outside?

2 A. No, sir.

3 Q. Any information that goes in those files is
4 going to handle -- be handled by you or your staff;
5 correct?

6 A. That is correct.

7 Q. Just as any information that comes out of those
8 files to be given to someone is going to be handled
9 by you and your staff; correct?

10 A. That is correct.

11 Q. Let's talk about documents in the other parts of
12 Lorillard, the active files. A person can't just
13 come in off the street and access an active file at
14 Lorillard; correct?

15 A. I would not imagine how that could be
16 accomplished, no.

17 Q. Is there security in place at Lorillard that
18 would prevent that kind of thing from happening?

19 A. Yes.

20 Q. And what are those security measures?

21 A. May I speak to Lorillard, New York, in the
22 beginning? I can't get in on the floors unless I am
23 buzzed through by a receptionist and I have to tell
24 her who I'm visiting. We have receptionists at both
25 the research center and our manufacturing area and we

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1 do have guards stationed, security guards stationed.

2 We must show our identification badges.

3 Q. The documents are considered valuable corporate
4 assets by Lorillard; correct?

5 A. Yes.

6 Q. All the documents that were reviewed for
7 production at any time, from 1984 forward, were
8 documents that were kept by Lorillard; correct?

9 A. Or its employees.

10 Q. Right. And when I speak of Lorillard, I'm
11 really speaking of the corporation and its employees
12 because the corporation as an entity only operates
13 through its employees.

14 A. I understand.

15 Q. The employees at Lorillard are told to keep
16 their documents secure; correct?

17 A. That's correct.

18 Q. Employees at Lorillard are expected to keep all
19 documents that they deem important in order to carry
20 out their day-to-day functions; correct?

21 A. That is correct.

22 Q. Are they told only to keep those documents that
23 are important to their day-to-day functions as
24 employees of Lorillard?

25 MR. MONICA: Object to the form of the

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1 question.

2 A. I've never -- I do --

3 I do not ever recall any directive to not keep
4 anything. The -- it's the employees -- they know
5 what they need to work with daily.

6 Q. And as a general practice, the Lorillard
7 employees keep only those documents that they need to
8 perform their functions at Lorillard; correct?

9 MR. MONICA: Again object to the form of
10 the question.

11 A. They would certainly keep the documents they
12 need to do their daily business.

13 Q. Many of the documents that Lorillard employees
14 retain in their files are documents either drafted by
15 themselves or written by other Lorillard employees;
16 correct?

17 A. Many of them?

18 Q. Yeah.

19 A. Yes.

20 Q. However, there are -- are also some documents
21 that are kept in Lorillard files that come from
22 outside sources; correct?

23 A. Yes.

24 Q. For instance, Lorillard has other people do
25 marketing research for them; correct?

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1 MR. MONICA: Beyond the scope of the
2 notice, object.

3 A. I know we use some services or we get -- obtain
4 data from services.

5 Q. And you obtain that data in lieu of collecting
6 that doc -- that data yourself; correct?

7 A. I would assume.

8 Q. Lorillard's a large corporation; correct?

9 A. Yes.

10 Q. If it chose to undertake a process to collect
11 that data, if it went to enough expense, it could
12 probably collect that data; correct?

13 MR. MONICA: Object, beyond the notice.

14 A. Sir, I don't have enough knowledge to -- to
15 understand what that would encompass.

16 Q. You understand that Lorillard, for instance,
17 tracks sales of cigarettes and brand share; correct?

18 A. Yes.

19 Q. Some of that information is collected by outside
20 services; correct?

21 A. I believe that's the case.

22 Q. Lorillard obtains that information and keeps
23 that information because it needs it to conduct its
24 business; correct?

25 MR. MONICA: Object, beyond the notice.

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1 A. I would assume.

2 Q. When looking through some of the -- the
3 documents we've looked through here from the stored
4 files, we've seen references to The Center for
5 Tobacco Research and The Tobacco Institute; correct?

6 A. Yes.

7 Q. Lorillard is a member of those two
8 organizations; correct?

9 MR. MONICA: Object, beyond the notice.

10 A. Tobacco Institute?

11 Q. Yes.

12 A. Yes.

13 Q. And how about CTR?

14 A. I'm not sure how that operates.

15 Q. The documents you store concerning CTR and TI
16 are documents that Lorillard received in its ordinary
17 course of business from those organizations;
18 correct?

19 MR. MONICA: Object to the form of the
20 question.

21 A. Since I have not reviewed those individual
22 files, a reasoned opinion, yes.

23 Q. Okay. Did you work for Dr. Spears for a time?

24 A. Yes, I did.

25 Q. Was Dr. Spears a member of either CTR or TI or

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1 the working groups?

2 MR. MONICA: Object, beyond the notice.

3 A. I can state that there was information in his
4 files relative to that. The exact relationships, I
5 do not know.

6 Q. Okay. The following questions I just want to
7 put in because I want to make the record clear and
8 complete here. If we could, let's go back to Exhibit
9 1001, the deposition notice.

10 (Discussion off the stenographic record.)

11 BY MR. O'FALLON:

12 Q. Do you have the deposition notice, which has
13 been marked as Plaintiffs' Exhibit 1001, in front of
14 you?

15 A. I do.

16 Q. And could you please turn to the second page of
17 that.

18 THE REPORTER: That's Exhibit 1000.

19 MR. O'FALLON: Oh, I'm sorry. I said it
20 again, didn't I? I'm sorry, this is 1000.

21 THE WITNESS: Yes, I do.

22 Q. Would you look at the last paragraph on that
23 page.

24 A. Yes.

25 Q. Could you just read that for the record,

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1 please.

2 A. "Pursuant to Rule 30.02(f), Lorillard shall
3 designate one or more representatives who shall be
4 qualified to testify as to matters known or
5 reasonably available to Lorillard concerning the
6 collection and production of documents produced in
7 the above captioned litigation."

8 Q. Okay. We've established as we've sat here for
9 the last few hours that you cannot tell me what
10 documents were actually collected from Lorillard's
11 files; correct?

12 A. That is correct.

13 Q. And we've established that you --

14 MR. MONICA: Wait. You cut her off.

15 MR. O'FALLON: Oh, I'm sorry.

16 MR. MONICA: Let her finish.

17 THE WITNESS: Yes.

18 A. I cannot determine if every document that was
19 collected. I can say that, with our rules, process,
20 procedures, that I know our files were reviewed; if
21 those files were within the range of the documents we
22 were attempting to collect, that they were copied.
23 Those copies were forwarded to our archives for
24 review. If they were responsive, they have been
25 produced.

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1 Q. Well you actually don't know what the attorneys
2 decided to copy; correct?

3 A. Sir, I had sat in on several collection
4 interviews. I watched foldering of offices in many
5 multiple locations. I am thoroughly satisfied that
6 the process was well done. I audited the process.

7 Q. That's not my -- that's not my question.

8 A. Okay.

9 Q. We have went through numerous documents and
10 references to numerous documents from your files,
11 from the cold-storage files, and I have asked you
12 specifically could you tell me whether that document
13 was copied, and time after time you've answered no,
14 you couldn't tell me that; correct?

15 A. That is correct.

16 Q. So what you have observed is that you've
17 observed lawyers going through files and foldering
18 some documents; correct?

19 A. Yes, sir.

20 Q. You didn't actually go and check to see which
21 exact documents they foldered; correct?

22 A. In the process of watching the foldering, as we
23 went through, I do not recall file titles, but I
24 would go behind the attorneys to see that I was
25 comfortable.

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1 Q. Okay.

2 A. I did what I would call an audit process, but
3 no, I do not recall file titles, et cetera.

4 Q. I believe you testified that there were some 2.7
5 million pages of documents that were actually
6 collected out of Lorillard's files during that time
7 period; correct?

8 A. That is my understanding.

9 Q. How many of that 2.7 million pages of documents
10 did you physically see taken out of files?

11 A. I can't estimate that, but it was -- it was 2 or
12 3 percent perhaps. I mean --

13 Q. And again to go back, you can't tell me any
14 documents that have specifically been produced other
15 than the documents that were specifically produced
16 out of your files, the indexes that we have talked
17 about here today; correct?

18 THE WITNESS: There are window washers.
19 Excuse me, I didn't mean to jump.

20 MR. MONICA: Could we -- let's have the --
21 I know there was a little distraction because we have
22 window washers and somebody hit the window out there,
23 and we're going to have the question repeated,
24 reread, please.

25 THE WITNESS: Yes, please. I'm sorry.

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1 MR. O'FALLON: Yeah, we actually thought we
2 were going to have somebody join us at the
3 deposition.

4 MR. MONICA: Yeah, it sounded like he was
5 coming through the window.

6 (Discussion off the stenographic record.)

7 (Record read by the court reporter.)

8 A. That is correct.

9 Q. And when you received that notice, did you
10 inform counsel that you would not be able to discuss
11 what had actually been produced in this litigation?

12 MR. MONICA: Objection, calls for attorney
13 client and I instruct the witness not to answer,
14 attorney-client privilege.

15 Are you following my instructions not to
16 answer?

17 THE WITNESS: Yes, sir.

18 MR. O'FALLON: Okay. And just so we're
19 clear, it's -- it's your objection that what she told
20 you about her ability to testify here today is
21 protected?

22 MR. MONICA: Yes.

23 BY MR. O'FALLON:

24 Q. Did you take any steps to prepare yourself to
25 testify about documents that were produced to the

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1 Minnesota plaintiffs?

2 A. Produced?

3 Q. Produced.

4 A. No, sir.

5 Q. So you made no effort to talk to the attorneys

6 and find out what categories of documents had been

7 produced in Minnesota; correct?

8 A. No, sir, I didn't.

9 Q. You took no effort to make sure that documents

10 had been produced relevant to the various requests

11 for production of documents made by plaintiffs in the

12 Minnesota --

13 MR. MONICA: Objection.

14 Q. -- litigation; correct?

15 MR. MONICA: Object to that. It's contrary

16 to her testimony. Object to the form of the

17 question.

18 MR. O'FALLON: Can you answer.

19 THE WITNESS: Would you -- I'm sorry, would

20 you repeat that again, please. I'm not trying to be

21 difficult. I want to be accurate.

22 (Record read by the court reporter.)

23 MR. MONICA: Again I have the same

24 objection. The witness has just testified on that

25 subject just a few moments ago, and I object, it

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1 misstates her testimony.

2 A. From the standpoint of trying to identify
3 individual documents of what was produced, I do not
4 have the knowledge. I know our process. I monitored
5 the process, and I was satisfied with the process
6 that was in place.

7 Q. Okay. And again, the process we're talking
8 about is the review and collection process that took
9 place at Lorillard; correct?

10 A. That is correct.

11 Q. Do you have knowledge about the production
12 process that took place at Shook, Hardy & Bacon?

13 MR. MONICA: Object to that form of the
14 question.

15 MR. O'FALLON: Strike that.

16 Q. Do you have knowledge about the production
17 process that took place at your lawyers' offices?

18 MR. MONICA: Object to that also as the
19 form of the question.

20 A. With regard to the fact that I know there was a
21 production process. I do not know individual
22 documents that were produced.

23 Q. And just to clarify, you don't know what
24 documents were produced responsive to Minnesota's
25 individual requests; correct?

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1 A. No, sir, I do not.

2 MR. MONICA: There of course is a 4B
3 index.

4 Q. Did you participate in the production of the 4B
5 index?

6 A. I did not.

7 Q. Did you review the 4B index prior to coming here
8 today?

9 A. I did not.

10 Q. Do you have access to the 4B index?

11 A. No, sir.

12 Q. And you didn't attempt to gain any knowledge
13 about the 4B indexes before coming here today to
14 testify; correct?

15 A. No, I did not.

16 Q. Do you understand what a 4B index is?

17 A. I do understand it.

18 Q. You understand that's a list of all documents
19 produced; correct?

20 A. I do understand that.

21 Q. And certain categories of information about
22 that?

23 A. I do understand that.

24 Q. Was the 4B index created by employees of
25 Lorillard?

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1 A. No.

2 Q. Who created the 4B index?

3 A. Counsel.

4 Q. Okay.

5 MR. O'FALLON: I would like to ask a few
6 questions about the 4A index. Why don't we just, for
7 protection sake, ask other people to leave the room.

8 MR. MONICA: I agree.

9 MR. O'FALLON: Is that acceptable?

10 MR. MONICA: Yes.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 MR. FERGUSON: I would -- at your request I
14 will leave, but I would advise you that the
15 Washington court has ordered production of the 4A
16 indices in the Washington litigation to the same
17 extent and a little bit further than ordered in
18 Minnesota.

19 MR. MONICA: I --

20 MR. FERGUSON: But I'll go ahead and
21 leave.

22 MR. MONICA: I'm aware of that, but I think
23 we're still in a position where the time for asking
24 for reconsideration or appeal or whatever is still
25 pending, so until that time passes, I think it would

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1 be better just to comply with counsel's request.

2 MR. FERGUSON: You're correct.

3 MR. O'FALLON: And more importantly, I
4 can't disclose that information, so --

5 MR. MONICA: Right.

6 THE REPORTER: Off the record, please.

7 (Discussion off the record.)

8 (Counsel for B.A.T. Industries and
9 the State of Washington left the
10 deposition room.)
11 (The following portion identified as
12 "CONFIDENTIAL - QUESTIONS CONCERNING
13 4A INDICES" will be contained only in
14 Plaintiffs' and Defendant Lorillard
15 Tobacco Company's counsels' transcripts
16 until clarification by The Court.)
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18 (The portion designated "CONFIDENTIAL -

19 QUESTIONS CONCERNING 4A INDICES" was

20 concluded, and all counsel indicated on

21 the appearances page of this transcript

22 returned to the deposition room for the

23 following proceedings.)

24

25

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1 BY MR. O'FALLON:

2 Q. I just have a couple issues I want to close up
3 on.

4 Ms. Jessup, you've testified that by 1992, 3.5
5 million pages of Lorillard documents were sitting in
6 Kansas City at the Shook Hardy archives; correct?

7 A. I believe it was by 1994 that that total -- all
8 prior collections prior to '95-'96 totaled 3.5
9 million pages.

10 Q. And it was my understanding you completed your
11 last collection in 1992.

12 A. I think we had one in '94 as well.

13 Q. So you had a '94 collection as well, and then
14 the '95-'96 collection?

15 A. I believe that is correct.

16 Q. And what was looked for in the '94 collection?

17 A. I believe that was more specific to
18 ignition-propensity issues.

19 Q. And when you say "ignition propensity," are you
20 talking about claims in which it's alleged that
21 houses were started on fire by cigarettes?

22 A. Yes.

23 Q. And was it your recollection that -- that that
24 1994 search was limited to that subject matter?

25 A. I'm not sure if it was entirely limited, but I

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1 believe that was the -- the focus of the
2 information. Here again, anything else that we
3 needed at that time would have been collected or
4 anything we might potentially need.

5 Q. Do you know approximately how many documents
6 were collected during that particular collection?

7 And again I'm talking about pages of documents.

8 A. I don't recall specifically.

9 Q. Do you have an approximation?

10 A. My present rec -- recollection is something like
11 80 to 100,000 pages maybe. I think that was a
12 smaller collection.

13 Q. The previous collections prior to the 1994
14 collection were generically related to smoking and
15 health; correct?

16 A. Generically, yes.

17 Q. So of the 3.5 million pages of documents that
18 were in Kansas City in 1994, approximately 3.4 of
19 those -- 3.4 million pages were related to
20 smoking-and-health issues; correct?

21 A. They would have been collected relative to
22 smoking-and-health issues, with a caveat that I am
23 not absolutely certain that was the correct number of
24 pages in '94. I believe I'm accurate.

25 Q. Do you know whether or not those 3.5 million

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1 pages that were in Shook Hardy's archives in 1994 had
2 previously been reviewed by attorneys?

3 A. You're speaking of any point in time?

4 Q. Yes.

5 A. It is my belief that they had been, yes.

6 Q. Is it also your understanding that they had been
7 specifically reviewed for purposes of producing them
8 in litigation should it occur?

9 A. That is my understanding.

10 Q. Do you have any familiarity with privilege
11 logs?

12 A. I know what they are.

13 Q. Okay. And those are logs created by the lawyers
14 that contain certain information about privileged
15 documents; correct?

16 A. Yes.

17 Q. Or at least documents the lawyers are contending
18 are privileged; correct?

19 A. Yes.

20 Q. Do you know whether privilege logs had been
21 produced for the 3.5 --

22 (Telephone interruption.)

23 THE REPORTER: Off the record, please.

24 (Discussion off the record.)

25 BY MR. O'FALLON:

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1 Q. Do you know whether as of 1994 any of the 3.5
2 million documents that were sitting in Shook, Hardy &
3 Bacon's archives had been denoted as privileged as of
4 1994?

5 A. I do not know.

6 Q. Do you know whether any privilege review of
7 those documents had taken place prior to 1994?

8 A. I do not know.

9 MR. MONICA: Objection. Again I object to
10 this line of questioning as beyond the scope of the
11 notice.

12 Q. It's then my understanding that in the 1995 and
13 1996 production some 2.5 million pages were added to
14 the collection at Shook Hardy; correct?

15 A. 2.7.

16 Q. 2.7. Which would bring the total number of
17 collected pages of Lorillard documents sitting in the
18 Shook Hardy archives to 5.2 million pages; correct?

19 A. 6.2, wouldn't it be? I've not added them. 3.5
20 and --

21 Q. You know what, you're probably right.

22 A. 6.2.

23 Q. That's why I'm not a mathematician.

24 So by the end of your document production in May
25 of 1996, 6.2 million pages of Lorillard documents

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1 were sitting in the archives at Shook, Hardy & Bacon;

2 correct?

3 A. Yes.

4 Q. You testified yesterday as to the total number

5 of documents that have been produced in Minnesota;

6 correct?

7 A. Yes.

8 Q. Have you also been kept apprised of the number

9 of documents that have been produced as they've been
10 produced?

11 A. I've seen information related to that.

12 Q. Okay. Have you seen copies of the letters that

13 counsel have filed with the court stating month by

14 month how many documents they've produced?

15 A. Yes.

16 Q. Was it your understanding that as of September

17 of 1996 Lorillard had only produced 587,000 pages of
18 its documents to the Minnesota depository?

19 A. I would have to see the letter because I don't

20 remember all the -- the math either, sir.

21 MR. O'FALLON: Mark that as an exhibit.

22 (Jessup Plaintiffs' Exhibit 1022 was marked
23 for identification.)

24 BY MR. O'FALLON:

25 Q. Ask you to look at Exhibit 1022. It's a letter

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1 dated March 3rd, 1996 to the court concerning
2 Lorillard's document production.

3 A. Did you say "March 3rd," sir?

4 Q. I'm sorry, September 3rd, 1996.

5 A. Yes.

6 Q. Does that indicate there have been 587,000
7 documents produced to Minnesota at that point in
8 time?

9 A. 587,000 pages.

10 Q. And is --

11 Do you know whether or not that -- those
12 documents had been produced from the 3.5 million
13 documents that were already in Shook, Hardy & Bacon's
14 archives and had been there since 1994?

15 A. I do not know, sir.

16 Q. Do you know how many of the 3.5 million pages of
17 Lorillard documents that were in Kansas City as of
18 1994 were in fact produced in Minnesota?

19 A. I do not know.

20 Q. Who would know that information?

21 A. Counsel.

22 Q. Outside counsel?

23 A. Outside counsel.

24 MR. O'FALLON: At this point I'm going to
25 end my questioning; however, I am going to continue

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1 it with the right to come back because it's going to
2 be my position that the witness produced has not been
3 able to testify on what documents were actually
4 produced, nor has she been able to testify on what
5 documents were actually collected from Lorillard's
6 files, and again that was the scope of the notice.

7 And let me just ask a clarifying question of
8 Mr. Monica. Mr. Monica, do you have another witness
9 today who can testify on those two subject matters?

10 MR. MONICA: Mrs. Jessup is the witness we
11 have designated on that subject. I have no other
12 witnesses with me today. I disagree with your
13 comment. I think she has fully testified and has
14 responded to all of your questions and we have met
15 our obligation to provide a witness pursuant to your
16 30.02(f) deposition notice. It's up to you to ask
17 the correct questions to elicit the information, and
18 you were free to ask any question you desired to do
19 so. We do not agree that you may keep the deposition
20 open. It is our position that you have completed
21 your examination and we need not produce anyone else
22 to -- on this particular notice.

23 MR. O'FALLON: Okay. And just so my
24 position is clear, I have asked numerous times
25 whether or not this witness can tell me what

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1 documents were produced, and my answer -- and the
2 answer has been consistently, "No, I cannot." I have
3 also asked her numerous times whether or not she can
4 tell me precisely what documents were collected
5 during the various document reviews that were
6 undertaken at Lorillard, and numerous times she has
7 answered, "No, I cannot."

8 MR. MONICA: I think we both have stated
9 our position.

10 DIRECT EXAMINATION

11 BY MR. MONICA:

12 Q. I do have a very short few questions I'd like to
13 ask Mrs. Jessup, and they pertain to some questions
14 that Mr. O'Fallon asked you yesterday involving Loews
15 Corporation, and I'm looking in particular at
16 paragraph -- or pardon me, at page 21 of your
17 deposition, and the question was that began the
18 series of questions and answers -- and this is a
19 question by Mr. O'Fallon -- "Right," period. "It's
20 my understanding that there are certain departments
21 between Lorillard and Loews where there are certain
22 functions that are shared," period. "Is that your
23 testimony," question mark.

24 With regard to your testimony on -- in
25 responding to Mr. O'Fallon's questions on these

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1 functions that he referred to as shared, were you
2 referring there to the functions that Loews provides
3 to Lorillard under the services agreement --

4 A. Yes, sir.

5 Q. -- between those two entities?

6 A. Yes.

7 Q. And do you understand that a Mr. Mark Schwartz
8 of Loews Corporation has filed affidavits stating the
9 nature of that agreement and the compensation passing
10 between the two corporations for those services?

11 A. Yes.

12 MR. O'FALLON: Objection, leading.

13 Q. And as far as you know, would he be the person
14 who would be most knowledgeable on that subject?

15 MR. O'FALLON: Objection, leading.

16 A. Yes.

17 Q. And would you be in a position yourself,
18 Mrs. Jessup, to know anything about the compensation
19 paid by Loews to Lorillard or vice versa for any
20 services?

21 A. No.

22 Q. And to your knowledge, does Loews Corporation
23 have any tobacco-type documents belonging to
24 Lorillard?

25 A. They would simply have information to conduct

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1 those service functions.

2 Q. Like the personnel?

3 A. Like human resources.

4 Q. Are you saying they'd have access to information
5 to provide services?

6 A. Yes.

7 Q. But to your knowledge, would they have any
8 smoking-and-health documents?

9 A. Not to my knowledge.

10 Q. They would have no tobacco smoking-and-health
11 documents?

12 A. No.

13 Q. No -- and they --

14 Loews, would it have any advertising documents
15 pertaining to Lorillard?

16 A. Not to my knowledge.

17 Q. So if --

18 If one wanted to know the extent of the services
19 and the compensation running between Loews and
20 Lorillard for the services, to your knowledge, would
21 Mr. Schwartz be the person that would have that
22 knowledge?

23 A. Yes, he would.

24 MR. O'FALLON: Objection, leading.

25 MR. MONICA: No further questions.

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1 ADVERSE EXAMINATION

2 BY MR. O'FALLON:

3 Q. Just as a follow-up to that, was any attempt
4 made during any of the reviews that we've talked
5 about to look through the Loews Corporation files to
6 determine whether they in fact had documents related
7 to smoking and health?

8 A. Yes.

9 Q. Specifically --

10 A. In the stored records files.

11 Q. Okay. Well the stored records files, my
12 understanding is that's a Lorillard entity; is that
13 correct?

14 A. It is located at Lorillard Greensboro and, as
15 you will note on your records categories --

16 Q. Right.

17 A. -- there were some Bulova records. That's a
18 Loews category.

19 Q. We went through that.

20 A. Yes.

21 Q. Outside of the stored records facilities, was
22 any attempt made to go to other Loews Corporation
23 offices and search those offices for documents
24 responsive to the various document requests at any
25 time?

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1 A. Not of which I am aware.

2 Q. Have we discussed every location that Lorillard
3 has looked for tobacco-related documents?

4 A. To the best of my knowledge, over the course of
5 the two days, yes.

6 MR. O'FALLON: I just have one other brief
7 follow-up question.

8 It's my understanding based on agreement of
9 counsel that no attempt has been made to search
10 foreign subsidiaries. Is that your understanding?

11 MR. MONICA: I think that's right.

12 There -- there are no tobacco subsidiaries. I think
13 that was our understanding, yes.

14 MR. O'FALLON: Okay.

15 Q. And is it your understanding that there -- and I
16 may have asked this, and I'm sorry if I'm repeating
17 it. I just don't remember it and I remember it's
18 something I wanted to ask.

19 Was there any research done by any foreign
20 subsidiary of Loews -- strike that.

21 Was there any research done by any foreign --
22 foreign subsidiary of Lorillard's on smoking and
23 health to the best of your knowledge?

24 MR. MONICA: That's been asked and
25 answered.

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1 MR. O'FALLON: What -- did I ask that?

2 THE WITNESS: Yes, you did, sir.

3 MR. O'FALLON: Okay. I wasn't sure. We've
4 been here a while.

5 With that, I will, subject to what I've said
6 previously, suspend my deposition.

7 MR. MONICA: And I -- I have no further
8 questions and I've already stated my position on
9 counsel's ability to conduct this deposition, and my
10 position is that State of Minnesota has completed its
11 deposition of this witness. And we of course
12 understand the State of Washington will be
13 interrogating Mrs. Jessup right after lunch, and
14 that's fine. Thank you.

15 THE REPORTER: Off the record, please.

16 (Deposition recessed at 11:26 o'clock
17 p.m.)

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1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that
3 I am qualified as a verbatim shorthand reporter; that
4 I took in stenographic shorthand the testimony of
5 HALLIE S. JESSUP at the time and place aforesaid; and
6 that the foregoing transcript consisting of pages 265
7 through 364, Volume II, is a true and correct, full
8 and complete transcription of said shorthand notes,
9 to the best of my ability.

10 Dated at Charlotte, North Carolina, this
11 11th day of April 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, HALLIE S. JESSUP, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 265 through 364, Volume II, and
5 that said transcript is a true and correct, full and
6 complete transcription of my deposition, except per
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 ____ Yes, changes were made per the attached
12 (no.) ____ pages.

13

14 ____ No changes were made.

15

16

17 HALLIE S. JESSUP

18 Deponent

19

20 Sworn and subscribed to before me this day
21 of 199__.

22

23

24 Notary Public

25 My commission expires: (WCL)

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